

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

SOLEDAD RAMIEREZ,  
SILVIA FARIAS,  
MARIA PUENTES,  
MARIA RUIZ, and  
MARIA DE LA O,

Defendants.

NOS. CR-07-117-RHW-1  
CR-07-117-RHW-2  
CR-07-117-RHW-3  
CR-07-117-RHW-4  
CR-07-117-RHW-5

**ORDER ADDRESSING  
PRETRIAL MOTIONS**

A pretrial conference was held on July 22, 2008, in Yakima, Washington. The Government was represented by K. Jill Bolton. Defendants were present and represented by Rolando Adame, Adolfo Banda, Patrick True, Victor Lara, and Ricardo Hernandez.

Pending before the Court were a number of motions. The Government did not have objection to any of the motions, except to Defendants' Motion to Sever. At the hearing, the Court granted Defendant's Motion to Suppress, as unopposed. The Court granted Defendants' Motion to Sever and ordered the parties to file Rule 16 materials within 45 days and to file complete disclosure of experts. The Court also determined that the trial would be held in Spokane, but indicated that Defendants' counsel could revisit this issue at a later time, if they believed the trial should be held in Yakima, Washington.

Fed. R. Crim. P. 8(a) provides for joinder of offenses against a single

1 defendant in the indictment if one of three conditions is satisfied. The offenses  
2 charged must be: (1) “of the same or similar character;” (2) “based on the same act  
3 or transaction;” or (3) “connected with or constitut[ing] parts of a common scheme  
4 or plan.” Fed. R. Crim. P. 8(a); *United States v. Jawara*, 474 F.3d 565, 572 (9th  
5 Cir. 2007). In conducting the Rule 8 analysis, the validity of the joinder is  
6 determined solely by the allegations in the indictment. *Id.* At least one of Rule  
7 8(a)'s three conditions must be satisfied for proper joinder. *Id.* at 573.

8 In determining whether the offenses charged have the same or similar  
9 character, the Ninth Circuit has instructed courts to consider factors such as the  
10 elements of the statutory offense, the temporal proximity of the acts, the likelihood  
11 and extent of evidentiary overlap, the physical location of the acts, the modus  
12 operandi of the crimes, and the identity of the victims. *Id.* at 578. The weight  
13 given to a particular factor should depend on the specific context of the case and  
14 the allegations in the indictment. *Id.* In any event, the similar character of the  
15 joined offenses must be ascertainable—either readily apparent or reasonably  
16 inferred—from the face of the indictment. *Id.*

17 Whether the offenses charged are part of a common scheme or plan turns on  
18 whether “commission of one of the offenses either depended upon or necessarily  
19 led to the commission of the other; proof of the one act either constituted or  
20 depended upon proof of the other.” *Id.* at 574. In order to be part of a common  
21 scheme or plan, the counts must involve “a concrete connection” that goes beyond  
22 “mere thematic similarity.” *Id.*

23 In this case, Defendants are charged with one count of Conspiracy to  
24 Tamper with a Witness or Informant and each are charged with an individual count  
25 of Theft of Government Property. A significant amount of time expired before the  
26 alleged theft of public funds and the meeting in which the alleged tampering  
27 occurred. Moreover, the elements for the two offenses are distinct. It is not clear  
28 that the evidence of the witness tampering, that is, the transcripts of the meetings,

1 would be admissible in the substantive counts. The conspiracy count and the  
2 substantive theft counts are not of the same or similar character nor are they  
3 connected with or constitute parts of a common scheme or plan. As such, it is  
4 appropriate to sever the conspiracy counts with the theft counts. The Court will  
5 also sever the individual counts, but will permit the Government to file briefing on  
6 whether joinder of the individual counts would be appropriate under Fed. R. Crim.  
7 P. 8(b). Thus, the trial on the conspiracy counts will begin on September 22, 2008,  
8 and the individual trials will be conducted after the conclusion of the conspiracy  
9 trial in the order as listed in the Indictment.

10 Accordingly, **IT IS HEREBY ORDERED:**

11 1. The Government's Motion for Discovery (Ct. Rec. 70) is **GRANTED**.

12 2. On or before **August 29, 2008**, the parties shall file their Rule 16  
13 materials.

14 3. On or before **August 29, 2008**, the parties shall file their motions in  
15 limine.

16 4. Defendant Maria Puentes' Motion for Joinder (Ct. Rec. 171) is  
17 **GRANTED**.

18 5. Defendant Maria Puentes' Motion to Continue Trial Date and All Other  
19 Dates/Deadlines (Ct. Rec. 172) is **DENIED**.

20 6. Defendant's Maria Ruiz's Motion to Produce Grand Jury Testimony  
21 (Ct. Rec. 48) is **DENIED**, as moot.

22 7. Defendant Maria Ruiz's Motion for Discovery (Ct. Rec. 54) is  
23 **DENIED**, as moot.

24 8. Defendant Maria Ruiz's Motion to Expedite (Ct. Rec. 55) is **DENIED**,  
25 as moot.

26 9. Defendant Maria Ruiz's Motion to Sever Defendant and Counts (Ct.  
27 Rec. 164) is **GRANTED**.

28 10. Defendant Maria Ruiz's Motion to Suppress Evidence (Ct. Rec. 175)

1 is **GRANTED**.

2 11. Defendant Maria De La O's Motion for Discovery (Ct. Rec. 59) is  
3 **GRANTED**.

4 12. Defendant Maria De La O's Motion to Produce Transcript of Grand  
5 Jury Testimony (Ct. Rec. 60) is **DENIED**, as moot.

6 13. Defendant Maria De La O's Motion for Release of Brady Materials (Ct.  
7 Rec. 62) is **DENIED**, as moot.

8 14. Defendant Maria De La O's Motion to Compel Disclosure (Ct. Rec. 64)  
9 is **DENIED**, as moot.

10 15. Defendant Maria De La O's Motion to Produce 404(b) & 609 Evidence  
11 (Ct. Rec. 66) is **DENIED**, as moot.

12 16. Defendant Maria Puentes' Motion for Discovery (Ct. Rec. 73) is  
13 **DENIED**, as moot.

14 17. Defendant Maria De La O's Motion for Joinder (Ct. Rec. 168) is  
15 **GRANTED**.

16 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
17 Order and forward copies to counsel.

18 **DATED** this 25<sup>th</sup> day of July, 2008.

19 *S/ Robert H. Whaley*

20 ROBERT H. WHALEY  
21 Chief United States District Court  
22

23 Q:\CRIMINAL\2007\07-117\motions.wpd  
24  
25  
26  
27  
28